

When the Committee on Preamble and Personal Rights drafted section 7, they did not know whether by law would mean general law or whether it would permit general variations.

I submit that this Committee has indicated that they want for this to be applied by public general law.

DELEGATE PENNIMAN: I do not think what was done in an amendment which was later defeated can be binding on what was kept. I would prefer to have some kind of expression by the group so that I do know what the meaning of the word "by law" is. Otherwise I will get into the morass of stating meanings.

DELEGATE WAGANDT: I think I would like to offer an amendment as follows: On line 8 in section 7 on page 3, add the word "public general" after the word "by", so this will now read "and in the manner as shall be permitted by public general law."

*(Whereupon, the motion was duly seconded.)*

DELEGATE J. CLARK (presiding): Does everyone understand that? This will be Amendment No. 11.

Are you ready for the question?

Delegate Case.

DELEGATE CASE: Mr. Chairman, with your indulgence, I would like to ask Delegate Clagett to answer a question or two about this if he will take the floor and yield.

DELEGATE CLAGETT: I yield.

DELEGATE CASE: Delegate Clagett, under the shared powers concept of the local government section, is it not true that a local unit of government, let us confine it to a county, would have been able with or without this particular provision in the Constitution to waive or abrogate the doctrine of sovereign immunity?

DELEGATE CLAGETT: Yes.

DELEGATE CASE: Is it not also true as the Committee Report now reads without the Clagett-Wagandt amendment the same thing would be true?

DELEGATE CLAGETT: No. I do not think the same thing would be true because here you have a conflict between what is judicial and what is legislative. Because of that conflict, I think that public general qualifies the situation, but if you find that there is no conflict between judicial and

legislative function, then the answer would be yes.

DELEGATE J. CLARK (presiding): Delegate Case.

DELEGATE CASE: So that the answer to that question is yes. So the Committee can follow this, let me state what I am getting at. If there was nothing in the constitution and the shared powers concept is adopted, then a county could waive the doctrine. Under this section the county could still waive the doctrine if it wanted to in its wisdom. The proposal that has been made by the Wagandt amendment in effect withdraws that power and would require that any waiver of the doctrine shall be done at a state level by public general law.

DELEGATE J. CLARK (presiding): Delegate Clagett.

DELEGATE CLAGETT: Yes.

DELEGATE J. CLARK (presiding): Delegate Case, you may proceed.

DELEGATE CASE: So that, Delegate Clagett, what you have said up to this point is that your amendment, or the Wagandt amendment which you really thought of first, would carve out another exception to the shared power concept that we all fought so hard for. It would, in effect, say that in this area, the exemption could only be provided by public general law.

Now, you are the greatest advocate in this chamber for the shared power concept, and I want to know why you think there ought to be an exception to it in this particular case. It seems to me, if I may say so, that this is a kind of governmental power that we can safely leave to the local political subdivisions.

DELEGATE J. CLARK (presiding): Delegate Case, you have fifteen seconds to give an answer.

Delegate Clagett.

DELEGATE CLAGETT: The answer to your question is that we are dealing with suits against the State in line 6, and its instrumentalities and political subdivisions. I believe in this area of dealing with sovereign immunity that there is a preemption, and the State would be preempting the field. When it preempts the field, it should be required to act by general law across the board affecting all of the instrumentalities or political subdivisions uniformly.